

<p style="text-align: right;">[121]</p> <p>1 Douglas Berlent</p> <p>2 going with this.</p> <p>3 MR. MONAGHAN: Thank you.</p> <p>4 I appreciate that. That helps.</p> <p>5 Q. Mr. Maxwell, were you, also, doing work</p> <p>6 for something called "Cats, Cats and More Cats"?</p> <p>7 A. I don't recall the name.</p> <p>8 Q. It's on Page 3 or however this is,</p> <p>9 horizontally.</p> <p>10 A. I would rely on the database to tell me</p> <p>11 what I did, but I did not sell any product to them,</p> <p>12 to the best of my recollection.</p> <p>13 Q. You have an entry here called, right</p> <p>14 under Gloryvision, "Jake's Doghouse." What is</p> <p>15 that?</p> <p>16 A. From what I recall, it was a catalogue</p> <p>17 of pet items.</p> <p>18 Q. Did you send my clients' CDs or any of</p> <p>19 them cassettes to Jake's Doghouse, pets.com, Pet</p> <p>20 Smart? Any of those?</p> <p>21 A. I would have to rely, solely, upon the</p> <p>22 database. I couldn't recall from memory.</p> <p>23 Q. The database reflected in this exhibit?</p> <p>24 A. Yes.</p> <p>25 Q. Well, please take a look.</p>	<p style="text-align: right;">[123]</p> <p>1 Douglas Berlent</p> <p>2 activities of what I --</p> <p>3 Q. This music, the Plaintiffs' music?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Fine.</p> <p>6 Okay. Now, all right. Thank you.</p> <p>7 All right. Let's move on.</p> <p>8 And so the same would be true with</p> <p>9 respect to other entries that say "Sent Samples"?</p> <p>10 For example, you have pets.com, Sent Samples,</p> <p>11 mentioning Lisa Erikson, ring bells?</p> <p>12 A. No, it does not.</p> <p>13 Q. All right.</p> <p>14 A. But I would need to rely on what was</p> <p>15 present in this database because I'm the only</p> <p>16 person who would have entered that information.</p> <p>17 Q. And you were the person making the</p> <p>18 decisions as to whom the product would be sent?</p> <p>19 A. Yes.</p> <p>20 Q. Who did you deal with at The Orchard?</p> <p>21 A. At what time period?</p> <p>22 Q. Well, when was this database created?</p> <p>23 A. I do not know.</p> <p>24 Q. Okay. There's a name here, Brian</p> <p>25 Nicholas. Does that ring any bells?</p>
<p style="text-align: right;">[122]</p> <p>1 Douglas Berlent</p> <p>2 MR. SHELOWITZ: I don't know</p> <p>3 if I stapled it, the right way,</p> <p>4 but this is --</p> <p>5 THE WITNESS: If you could</p> <p>6 just -- You asked about Jake's</p> <p>7 Doghouse?</p> <p>8 MR. MONAGHAN: Right.</p> <p>9 THE WITNESS: So, if you</p> <p>10 can find Jake's Doghouse?</p> <p>11 MR. SHELOWITZ: Right</p> <p>12 here.</p> <p>13 THE WITNESS: Just go</p> <p>14 across to the right on that</p> <p>15 column. Is there a column</p> <p>16 that says "Materials Sent"?</p> <p>17 MR. MONAGHAN: Yeah. It</p> <p>18 says "Sent Samples."</p> <p>19 THE WITNESS: Sent Samples.</p> <p>20 So, if it says I sent a</p> <p>21 sample, I sent a sample.</p> <p>22 Q. How do you know those are a sample of</p> <p>23 our clients' product? Is this entire exhibit</p> <p>24 related to this case?</p> <p>25 A. It's related to this music. My</p>	<p style="text-align: right;">[124]</p> <p>1 Douglas Berlent</p> <p>2 A. No, it does not.</p> <p>3 Q. Then there's a name on the document we</p> <p>4 will see or will see Sam Perlman. Does that name</p> <p>5 ring a bell?</p> <p>6 A. Yeah, Sam, I remember because he was</p> <p>7 the first person I spoke with when I got in contact</p> <p>8 with The Orchard.</p> <p>9 Q. Have we ever dealt with each other</p> <p>10 before, you and I, on any matter over the years?</p> <p>11 You look familiar.</p> <p>12 A. Not as far as I know.</p> <p>13 Q. Okay. Did you sell any physical</p> <p>14 product of the Plaintiffs? By that, I mean hard</p> <p>15 copies?</p> <p>16 A. Did I, personally --</p> <p>17 Q. Your company?</p> <p>18 A. -- sell? My company?</p> <p>19 Q. Media Right Productions?</p> <p>20 A. I know that we shipped, approximately,</p> <p>21 nine copies of the CD to The Orchard and, as far as</p> <p>22 my recollection, those are the only copies that I</p> <p>23 ever, personally, shipped for sale or potential</p> <p>24 sale.</p> <p>25 Q. When you say you shipped nine copies to</p>

<p style="text-align: right;">[125]</p> <p>1 Douglas Berlent</p> <p>2 The Orchard for sale, what was your understanding</p> <p>3 of how The Orchard would use those nine copies that</p> <p>4 you sent?</p> <p>5 A. The same way that they were going to</p> <p>6 use my music that I sent to them, that they would</p> <p>7 use their best efforts to sell and promote them.</p> <p>8 Q. I need the mechanics, though. How did</p> <p>9 they do it?</p> <p>10 A. I don't know.</p> <p>11 Q. Well, don't they have to convert the</p> <p>12 CDs and you didn't send them a master; correct?</p> <p>13 A. Master is --</p> <p>14 Q. -- term of art?</p> <p>15 A. -- an ambiguous term to me because</p> <p>16 every CD is, potentially, a master.</p> <p>17 Q. Right. And how is that the case?</p> <p>18 A. I sent to them, approximately, nine CDs</p> <p>19 of each title, from my recollection.</p> <p>20 Q. Right. And what did you understand</p> <p>21 they were going to do with them?</p> <p>22 A. Use their best efforts to promote and</p> <p>23 sell the music.</p> <p>24 Q. And how was the music to be delivered</p> <p>25 to the consumer?</p>	<p style="text-align: right;">[127]</p> <p>1 Douglas Berlent</p> <p>2 delivered the CDs to The Orchard, that they were</p> <p>3 going to sell it to iTunes because iTunes did not</p> <p>4 exist at that time.</p> <p>5 Q. Were there others that existed?</p> <p>6 Napster or some others?</p> <p>7 A. I do not recall.</p> <p>8 Q. When you sent those nine hard copies to</p> <p>9 The Orchard, was it your understanding they were</p> <p>10 going to sell hard copies, the actual CDs and</p> <p>11 cassettes?</p> <p>12 A. That was one of my understandings, yes.</p> <p>13 Q. What was your other understanding, if</p> <p>14 any?</p> <p>15 A. That they were going to do whatever</p> <p>16 they do to create sales of that music.</p> <p>17 Q. You have to be more specific. How were</p> <p>18 they going to do that?</p> <p>19 A. Honestly, I don't recall. I know, you</p> <p>20 know, some of the things that they --</p> <p>21 MR. SHELOWITZ: There's no</p> <p>22 question.</p> <p>23 THE WITNESS: No question.</p> <p>24 Okay.</p> <p>25 MR. SHELOWITZ: You answered</p>
<p style="text-align: right;">[126]</p> <p>1 Douglas Berlent</p> <p>2 A. That wasn't really my -- I'm not</p> <p>3 involved. The Orchard, I didn't know how they</p> <p>4 were, you know, all the various things that they</p> <p>5 were doing.</p> <p>6 Q. Well, do they sell hard copies?</p> <p>7 A. That was one of the things that they</p> <p>8 sold.</p> <p>9 Q. Okay. And, when you sent them nine,</p> <p>10 were you sending that for the purpose of testing</p> <p>11 the waters to see how well those would do?</p> <p>12 A. It wasn't a test. They asked me to</p> <p>13 send, from my recollection, approximately,</p> <p>14 10 copies of all of our titles and that's what we</p> <p>15 did.</p> <p>16 Q. I understand. And, when you sent them,</p> <p>17 did you understand they were going to use any of</p> <p>18 those as masters for the purpose of distributing it</p> <p>19 to eTailers, such as iTunes?</p> <p>20 A. To the best of my recollection, iTunes</p> <p>21 didn't exist then.</p> <p>22 Q. Then your answer would be you didn't</p> <p>23 understand that to be the case?</p> <p>24 A. I did not understand that to be the</p> <p>25 case that they were going to, at that time when I</p>	<p style="text-align: right;">[128]</p> <p>1 Douglas Berlent</p> <p>2 the question.</p> <p>3 Q. Okay. I'm going to ask you: What were</p> <p>4 you about to say? There's the question.</p> <p>5 A. I don't remember what I was about to</p> <p>6 say.</p> <p>7 Q. You started with "honestly."</p> <p>8 A. I don't recall.</p> <p>9 Q. Did you or anybody that you contacted</p> <p>10 in connection with my clients' CDs, tapes and</p> <p>11 cassettes sell any of those CDs, cassettes or</p> <p>12 tapes, that includes you or anyone else that you</p> <p>13 contacted, including The Orchard?</p> <p>14 A. Can you state the question again for</p> <p>15 me, please?</p> <p>16 Q. How many copies of Cats and Dogs or any</p> <p>17 of the CDs or tapes were sold through your company,</p> <p>18 either directly or indirectly?</p> <p>19 A. I do not know.</p> <p>20 Q. Did you ever pay any money to my</p> <p>21 clients for the sale of any of the CDs or</p> <p>22 cassettes?</p> <p>23 A. No, I did not.</p> <p>24 Q. Did you ever account to the Plaintiffs</p> <p>25 prior to this litigation for any sales of CDs or</p>

<p style="text-align: right;">[129]</p> <p>1 Douglas Berlent</p> <p>2 cassettes that had been provided to you?</p> <p>3 A. No, I did not.</p> <p>4 Q. How long was the Media Right Product</p> <p>5 Representation Agreement? What was the term of</p> <p>6 that? How long was it to last?</p> <p>7 A. I understood it to still be in effect</p> <p>8 and it was to last until one of the parties</p> <p>9 canceled it.</p> <p>10 Q. Reading the last paragraph, "The term</p> <p>11 of this agreement shall be thirty-six months from</p> <p>12 the date of signing unless terminated as specified</p> <p>13 by the agreement," is that what you're referring</p> <p>14 to?</p> <p>15 MR. SHELOWITZ: Objection</p> <p>16 to the form.</p> <p>17 You asked him what his</p> <p>18 understanding was and he</p> <p>19 testified about what his</p> <p>20 understanding was.</p> <p>21 MR. MONAGHAN: Yeah.</p> <p>22 Q. Was that the paragraph that you had in</p> <p>23 mind when you gave that answer?</p> <p>24 A. No, it was not.</p> <p>25 Q. Okay. What language in the Agreement</p>	<p style="text-align: right;">[131]</p> <p>1 Douglas Berlent</p> <p>2 A. Yes, I did.</p> <p>3 Q. And what words did I read to you that</p> <p>4 gave more than 36 months?</p> <p>5 MR. SHELOWITZ: Objection.</p> <p>6 The contract speaks for itself.</p> <p>7 MR. MONAGHAN: That's not</p> <p>8 the question. The question was:</p> <p>9 Was there anything in what I just</p> <p>10 read that his understanding</p> <p>11 suggests gave him more than</p> <p>12 36 months? I'm going to ask him</p> <p>13 what words were there?</p> <p>14 MR. SHELOWITZ: If you want</p> <p>15 him to reread it, you can ask him</p> <p>16 that. If you want to hear it</p> <p>17 again or you want to read,</p> <p>18 whatever you think.</p> <p>19 MR. MONAGHAN: You need to</p> <p>20 read the language again?</p> <p>21 MR. SHELOWITZ: Or you can</p> <p>22 look at it, whatever you want.</p> <p>23 THE WITNESS: Based on what</p> <p>24 you just read to me --</p> <p>25 MR. MONAGHAN: Yeah.</p>
<p style="text-align: right;">[130]</p> <p>1 Douglas Berlent</p> <p>2 provides that it is indefinite unless terminated?</p> <p>3 A. That was my understanding of the</p> <p>4 Agreement, as I recall.</p> <p>5 Q. Okay. Now, I'm going to read that</p> <p>6 entire paragraph and ask you if it squares with</p> <p>7 your understanding. "The term of this agreement</p> <p>8 shall be thirty-six months from the date of signing</p> <p>9 unless terminated as specified by the agreement.</p> <p>10 This representation of Songs For Dogs and Songs For</p> <p>11 Cats by Media Right Productions, may be canceled by</p> <p>12 either party with written notification provided at</p> <p>13 least 30 days prior to the desired termination</p> <p>14 date." Did you hear what I just read, Mr. Maxwell?</p> <p>15 A. Yes, I did.</p> <p>16 Q. Okay. Was that your understanding of</p> <p>17 the provisions for the term of the Agreement and</p> <p>18 termination of the Agreement?</p> <p>19 A. That was not my understanding of what I</p> <p>20 recalled the terms to be of the Agreement.</p> <p>21 Q. Did you draft that clause?</p> <p>22 A. I do not recall if it was myself or</p> <p>23 Ellen or a combination of both of us.</p> <p>24 Q. Do you understand what I just read you</p> <p>25 to give you more than 36 months?</p>	<p style="text-align: right;">[132]</p> <p>1 Douglas Berlent</p> <p>2 THE WITNESS: Could you now</p> <p>3 ask me the question that you</p> <p>4 would like to know?</p> <p>5 Q. Okay. Doesn't that mean that the</p> <p>6 outside limit of the Agreement is 36 months unless</p> <p>7 sooner terminated?</p> <p>8 A. Based on what you read, yes. I would</p> <p>9 think so.</p> <p>10 Q. Were there any written amendments to</p> <p>11 this Agreement?</p> <p>12 A. Not that I recall.</p> <p>13 Q. And, to the best of your knowledge, was</p> <p>14 the Agreement ever terminated by either side,</p> <p>15 formally, by a writing?</p> <p>16 A. No, it was not terminated.</p> <p>17 Q. And you acknowledge, sir, there should</p> <p>18 have been some payments made to the Plaintiffs,</p> <p>19 some payments; isn't that right?</p> <p>20 A. Yes, I do acknowledge.</p> <p>21 Q. And you acknowledge there should have</p> <p>22 been an accounting to Plaintiffs at some point;</p> <p>23 correct?</p> <p>24 A. Yes, I do.</p> <p>25 Q. And who, within your company, had the</p>

<p style="text-align: right;">[133]</p> <p>1 Douglas Berlent</p> <p>2 responsibility for rendering an accounting to the</p> <p>3 Plaintiffs?</p> <p>4 A. Myself.</p> <p>5 Q. Who had the responsibility for making</p> <p>6 payment to the Plaintiffs?</p> <p>7 A. Myself.</p> <p>8 Q. Did you ever enter into an agreement</p> <p>9 with The Orchard, a written agreement regarding the</p> <p>10 sales of the Plaintiffs' CDs and tapes?</p> <p>11 A. I believe yes, I did enter an agreement</p> <p>12 with The Orchard and part of that agreement was to</p> <p>13 sell Plaintiffs' CDs and tapes along with my music.</p> <p>14 Q. Okay. I'm going to show you now --</p> <p>15 MR. SHELOWITZ: I think</p> <p>16 we have a copy of that.</p> <p>17 MR. MONAGHAN: You have it?</p> <p>18 MR. SHELOWITZ: Yeah.</p> <p>19 Q. Mr. Shelowitz is related to you; isn't</p> <p>20 he, Mr. Maxwell? Is he a cousin or something?</p> <p>21 A. Not by blood.</p> <p>22 THE WITNESS: What does</p> <p>23 this say?</p> <p>24 MR. SHELOWITZ: This is</p> <p>25 a letter, February 1st, 2000,</p>	<p style="text-align: right;">[135]</p> <p>1 Douglas Berlent</p> <p>2 "Music For Lovemaking</p> <p>3 "Music For Lovemaking II</p> <p>4 "Sounds Of The Womb</p> <p>5 "A Celebration Of Motherhood</p> <p>6 "Songs For Dogs</p> <p>7 "Songs For Cats</p> <p>8 "Golf's Greatest Hits I</p> <p>9 "Cigar Smokin' Sounds</p> <p>10 "Primal Pounding</p> <p>11 "H2Overtures," it looks like.</p> <p>12 "Being The Best," and it</p> <p>13 continues, "Thank you, and I look</p> <p>14 forward to great success."</p> <p>15 "Yours truly," it's printed</p> <p>16 "Doug Maxwell" and signature, and</p> <p>17 he's going to ask you if that's</p> <p>18 your signature.</p> <p>19 Q. Is that your signature, Mr. Maxwell?</p> <p>20 A. Yes, it is.</p> <p>21 Q. Okay. Is this letter dated</p> <p>22 February 1st, 2000?</p> <p>23 A. Yes, it is.</p> <p>24 Q. Can you tell me how it is you were</p> <p>25 telling Mr. Perlman on February 1st that you were</p>
<p style="text-align: right;">[134]</p> <p>1 Douglas Berlent</p> <p>2 Sam Perlman, The Orchard.</p> <p>3 "This letter confirms" --</p> <p>4 I'm going to read it, if I can</p> <p>5 help Doug, for the record.</p> <p>6 MR. MONAGHAN: Yeah. Sure.</p> <p>7 MR. SHELOWITZ: This is a</p> <p>8 letter dated February 1st, 2000.</p> <p>9 It's to Sam Perlman at The Orchard.</p> <p>10 The letterhead says "Media Right</p> <p>11 Productions."</p> <p>12 Says, "Dear Sam,</p> <p>13 "This letter confirms our</p> <p>14 conversation of today:</p> <p>15 "The audio CD titles listed</p> <p>16 below will be distributed by The</p> <p>17 Orchard under the terms and</p> <p>18 conditions listed in your</p> <p>19 distribution agreement.</p> <p>20 "My signature below confirms</p> <p>21 our acceptance of all your</p> <p>22 specified terms and conditions."</p> <p>23 And then it says, in bold</p> <p>24 caps, not bold but caps, "TITLES</p> <p>25 FOR DISTRIBUTION:</p>	<p style="text-align: right;">[136]</p> <p>1 Douglas Berlent</p> <p>2 gonna let him distribute these titles from my</p> <p>3 clients when the Agreement, the Product Rep</p> <p>4 Agreement, isn't dated until -- isn't signed by you</p> <p>5 until the 7th of February, six days later, and by</p> <p>6 my client, Ellen Bernfeld, 23 days later,</p> <p>7 February 24th, 2000?</p> <p>8 A. I can do my best to offer a number of</p> <p>9 explanations.</p> <p>10 Q. I just want a truthful explanation.</p> <p>11 A. The truthful explanation would then be,</p> <p>12 to the best of my recollection, I don't know how</p> <p>13 that happened, specifically.</p> <p>14 Q. Okay. That's fine.</p> <p>15 But you agree with me that you,</p> <p>16 actually, were telling Mr. Perlman and giving The</p> <p>17 Orchard rights that you had no written agreement to</p> <p>18 give them as of February 1st, 2000, whatever your</p> <p>19 construction is of the Product Rep Agreement?</p> <p>20 A. I can't agree with that because any of</p> <p>21 explanations I would offer that are plausible</p> <p>22 within my world, such as I can't see, proofreading,</p> <p>23 whether 1 is 7 or know which dates apply going back</p> <p>24 that far, but I can tell you, truthfully, from the</p> <p>25 understanding that Ellen and I shared, she knew</p>

<p style="text-align: right;">[137]</p> <p>1 Douglas Berlent</p> <p>2 about The Orchard because it was the main premise</p> <p>3 of our discussion at that time. She was excited by</p> <p>4 it and knew that that was one of the main things</p> <p>5 that was underway. I would not have sent the</p> <p>6 titles without her authorization or knowing about</p> <p>7 it. I, unfortunately, can't tell you the exact</p> <p>8 details of what transpired, eight years ago, that</p> <p>9 accounts for why there's a discrepancy in the date,</p> <p>10 but I can swear under oath that I did not send the</p> <p>11 materials to The Orchard without your client Ellen</p> <p>12 Bernfeld's knowledge.</p> <p>13 Q. Now, did you say, a moment ago, you</p> <p>14 can't tell a 1 from a 7?</p> <p>15 A. I offered that as a possible</p> <p>16 explanation of what could have happened.</p> <p>17 Q. Are you talking about the date next to</p> <p>18 your signature; right?</p> <p>19 MR. SHELOWITZ: You're</p> <p>20 both looking at two different</p> <p>21 agreements. He's looking at</p> <p>22 the --</p> <p>23 MR. MONAGHAN: Please show</p> <p>24 him the second page, the</p> <p>25 signature page.</p>	<p style="text-align: right;">[139]</p> <p>1 Douglas Berlent</p> <p>2 question is: Do I see vagueness</p> <p>3 in my signature date, the answer</p> <p>4 is not, but supporting truthfulness</p> <p>5 of what I said, how was I to get</p> <p>6 the copies I sent to The Orchard</p> <p>7 if not from Ellen Bernfeld, herself?</p> <p>8 MR. MONAGHAN: I can't answer</p> <p>9 that question. I can only ask the</p> <p>10 questions.</p> <p>11 THE WITNESS: I understand and</p> <p>12 I, respectfully, I'm just trying to</p> <p>13 say.</p> <p>14 Q. You agree with me that you provided</p> <p>15 copies of my clients' CDs to Mr. Perlman at The</p> <p>16 Orchard before there was a signed Agreement; isn't</p> <p>17 that right? Yes or no?</p> <p>18 A. I cannot agree to that, definitively,</p> <p>19 from the best of my recollection because I don't</p> <p>20 think I would have done that.</p> <p>21 Q. Okay. All right.</p> <p>22 Now, your letter to Mr. Perlman,</p> <p>23 February 1st, Maxwell-4 says, "The audio CD titles</p> <p>24 listed below will be distributed by The Orchard</p> <p>25 under the terms and conditions listed in your</p>
<p style="text-align: right;">[138]</p> <p>1 Douglas Berlent</p> <p>2 MR. SHELOWITZ: This is the</p> <p>3 Product Representation Agreement.</p> <p>4 That's the one he's talking about.</p> <p>5 THE WITNESS: Right.</p> <p>6 Q. Is that what you were referring to?</p> <p>7 A. No.</p> <p>8 Q. Well, what was the 1 and 7?</p> <p>9 MR. SHELOWITZ: This, here,</p> <p>10 is the letter to Orchard.</p> <p>11 THE WITNESS: Mitch and</p> <p>12 yourself had instructed me that</p> <p>13 this letter was from February 1st.</p> <p>14 You asked about how there could</p> <p>15 be a discrepancy that I could</p> <p>16 send the CD to The Orchard when</p> <p>17 the Agreement that we signed was</p> <p>18 on the 7th.</p> <p>19 MR. MONAGHAN: No. I'm</p> <p>20 suggesting that my client signed</p> <p>21 it on February 24th and I don't</p> <p>22 see any vagueness in her date.</p> <p>23 Do you? If you look at the</p> <p>24 signature page, it says "2/24."</p> <p>25 THE WITNESS: If your</p>	<p style="text-align: right;">[140]</p> <p>1 Douglas Berlent</p> <p>2 distribution agreement." That's what it said.</p> <p>3 Did you have a separate distribution</p> <p>4 agreement with The Orchard?</p> <p>5 A. I do not recall. What do you mean by</p> <p>6 separate?</p> <p>7 Q. Well, did you have a distribution</p> <p>8 agreement with The Orchard?</p> <p>9 A. Yes.</p> <p>10 Q. All right. Is that anywhere in this</p> <p>11 room, to your knowledge?</p> <p>12 MR. SHELOWITZ: Maybe,</p> <p>13 you want to show him</p> <p>14 something? He can't see</p> <p>15 what's right in front of</p> <p>16 his face.</p> <p>17 Q. Did you provide a copy of the</p> <p>18 distribution agreement with The Orchard to us in</p> <p>19 your document production?</p> <p>20 A. I, personally, did not.</p> <p>21 Q. Were you aware that any such agreement</p> <p>22 had been provided to us?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And is that distribution</p> <p>25 agreement Maxwell Exhibit 5?</p>

<p style="text-align: right;">[141]</p> <p>1 Douglas Berlent</p> <p>2 All right. Exhibit 5 is a two-page</p> <p>3 document. It's bearing Bates 17 and 18. It has a</p> <p>4 reference up top "Paul Millman, Esquire," with some</p> <p>5 phone numbers, date of July 18, 2007. Prior fax</p> <p>6 date of 5/29/2007, Paul Millman.</p> <p>7 Below that, "From: The Orchard,</p> <p>8 May 10, 2007," and I mean, to me, this appears to</p> <p>9 be a document that your prior Counsel, Paul</p> <p>10 Millman, obtained, directly, from The Orchard.</p> <p>11 Does that sound correct?</p> <p>12 A. That does sound correct.</p> <p>13 Q. Okay. And that's your understanding?</p> <p>14 A. That is my understanding.</p> <p>15 Q. You didn't have a copy of this</p> <p>16 agreement, either?</p> <p>17 A. No, I did not.</p> <p>18 Q. Okay. What happened to -- Is there a</p> <p>19 signature page with this agreement?</p> <p>20 A. Is that a question I should answer?</p> <p>21 Q. Yeah. Is there a signature page with</p> <p>22 this agreement?</p> <p>23 A. I don't recall.</p> <p>24 Q. How do you know this is your</p> <p>25 distribution agreement?</p>	<p style="text-align: right;">[143]</p> <p>1 Douglas Berlent</p> <p>2 February 1st, Exhibit 4, refers to "audio CD</p> <p>3 titles"; correct? Do you remember that phrase?</p> <p>4 Your Counsel, Mr. Shelowitz, read it.</p> <p>5 A. Is that --</p> <p>6 MR. SHELOWITZ: The document</p> <p>7 says "TITLES FOR DISTRIBUTION,"</p> <p>8 and it says, in the sentence, "The</p> <p>9 audio CD titles listed below will</p> <p>10 be distributed by The Orchard under</p> <p>11 the terms and conditions listed in</p> <p>12 your distribution agreement."</p> <p>13 Q. Does the reference -- Does the word</p> <p>14 "titles" -- Is the word "titles" synonymous to you</p> <p>15 with CDs and tapes?</p> <p>16 A. No.</p> <p>17 Q. Okay. How is it different?</p> <p>18 A. Rhetorically, are you asking in the</p> <p>19 broad sense of why a title is different?</p> <p>20 Q. In the sense of this transaction?</p> <p>21 A. Could you restate the question, please?</p> <p>22 Q. You said it was different, titles</p> <p>23 doesn't mean the same thing as CDs and tapes, and I</p> <p>24 said how is it different in your mind? And you</p> <p>25 said in the broad sense? And I said no, in this</p>
<p style="text-align: right;">[142]</p> <p>1 Douglas Berlent</p> <p>2 A. I would rely on The Orchard producing</p> <p>3 my distribution agreement by the request of my</p> <p>4 Counsel.</p> <p>5 Q. Is this just a standard distribution</p> <p>6 agreement --</p> <p>7 MR. SHELOWITZ: Objection.</p> <p>8 MR. MONAGHAN: Let me just</p> <p>9 finish.</p> <p>10 -- standard distribution</p> <p>11 agreement that you understand</p> <p>12 as obtained from The Orchard</p> <p>13 and you are supposing this is,</p> <p>14 in fact, the one that you had</p> <p>15 at the time?</p> <p>16 THE WITNESS: Yes, I'm</p> <p>17 making that supposition.</p> <p>18 Q. Okay. So, you don't, actually, have a</p> <p>19 copy of the distribution agreement which is</p> <p>20 referred to in the letter of February 1st to Sam</p> <p>21 Perlman, the exhibit I just asked you about which</p> <p>22 was Number 4; is that right?</p> <p>23 A. No, I do not, actually, have a copy of</p> <p>24 that agreement.</p> <p>25 Q. Okay. Now, I notice that the letter of</p>	<p style="text-align: right;">[144]</p> <p>1 Douglas Berlent</p> <p>2 transaction?</p> <p>3 A. They were referenced as to how the</p> <p>4 music was being delivered to The Orchard for</p> <p>5 distribution.</p> <p>6 Q. You were delivering titles and your</p> <p>7 Product Representation Agreement referred to CDs</p> <p>8 and tapes. Didn't use the word "titles"; did it?</p> <p>9 A. Used recordings.</p> <p>10 Q. Okay.</p> <p>11 A. So, the title of the recordings.</p> <p>12 Q. Right. And you told us, earlier, that</p> <p>13 among the activities that The Orchard was to</p> <p>14 perform for you was, actually, selling hard copies</p> <p>15 of my clients' CDs and tapes; am I right?</p> <p>16 Didn't you say that, earlier?</p> <p>17 A. Yes.</p> <p>18 Q. But did you, actually, deliver hard</p> <p>19 copies to The Orchard or did you deliver titles?</p> <p>20 What did you give them?</p> <p>21 A. I delivered the items that are here on</p> <p>22 the table in exhibits.</p> <p>23 Q. I think you said nine --</p> <p>24 A. Approximately.</p> <p>25 Q. -- correct? Approximately, nine?</p>

<p style="text-align: right;">[145]</p> <p>1 Douglas Berlent</p> <p>2 A. Approximately, nine.</p> <p>3 Q. How were you able to recall that with</p> <p>4 that degree of specificity?</p> <p>5 A. Because, through the course of this</p> <p>6 litigation, it had come to my attention, through</p> <p>7 The Orchard's database, how many he logged in as</p> <p>8 receiving.</p> <p>9 Q. I see.</p> <p>10 And The Orchard agreement that you gave</p> <p>11 me, which you suppose was the agreement that you</p> <p>12 had, talks about selling the recordings in eStores;</p> <p>13 is that right?</p> <p>14 Do you need me to read that or have</p> <p>15 Mr. Shelowitz read it?</p> <p>16 A. I would trust you if you tell me that's</p> <p>17 what it says and I would, of course, agree.</p> <p>18 Q. You don't have to agree with me.</p> <p>19 A. Okay then.</p> <p>20 Q. I've been wrong many many times.</p> <p>21 A. Well then.</p> <p>22 Q. I will read it.</p> <p>23 "We agree to provide you" --</p> <p>24 Now, are we in agreement that the "we"</p> <p>25 here is Media Right Productions and the "you" is</p>	<p style="text-align: right;">[147]</p> <p>1 Douglas Berlent</p> <p>2 here that says The Orchard is going to sell hard</p> <p>3 copies?</p> <p>4 MR. SHELOWITZ: Again, you</p> <p>5 can ask him what his understanding</p> <p>6 of the agreement is. I can look</p> <p>7 here and find a place where it</p> <p>8 says --</p> <p>9 MR. MONAGHAN: No. Please.</p> <p>10 MR. SHELOWITZ: It says it</p> <p>11 right here, but you're putting</p> <p>12 words into his mouth. His</p> <p>13 understanding, please ask him</p> <p>14 everything you want.</p> <p>15 If you want to ask what's</p> <p>16 written in the agreement, I see</p> <p>17 here, "You agree to supply us</p> <p>18 with compact discs." It's a</p> <p>19 two-page agreement. If this</p> <p>20 is the agreement, whatever it</p> <p>21 says, it says. We don't object</p> <p>22 to what it says.</p> <p>23 If you want to ask what</p> <p>24 his understanding is, of course,</p> <p>25 he will be more than happy to</p>
<p style="text-align: right;">[146]</p> <p>1 Douglas Berlent</p> <p>2 The Orchard?</p> <p>3 MR. SHELOWITZ: I think we can</p> <p>4 agree.</p> <p>5 MR. MONAGHAN: If that's what</p> <p>6 the contract says?</p> <p>7 Q. Okay. "We agree to provide you</p> <p>8 throughout the Territory and during the Sales</p> <p>9 Period with listing of your Recordings in E-Stores</p> <p>10 during the Term. We will pay you Seventy (70%)</p> <p>11 percent of our Net Income, accounted for quarterly</p> <p>12 (please see www.theorchard.com for Accounting and</p> <p>13 Payment Policy), which directly results from sales</p> <p>14 of any of your Recordings."</p> <p>15 Isn't this agreement limited to sales</p> <p>16 of electronic media?</p> <p>17 MR. SHELOWITZ: Objection.</p> <p>18 The document speaks for itself.</p> <p>19 MR. MONAGHAN: Well, it</p> <p>20 does speak for itself, but I</p> <p>21 can't see anything here other</p> <p>22 than dealing with E-Sales,</p> <p>23 electronic media.</p> <p>24 Q. You've had an opportunity to look at</p> <p>25 this agreement, I'm sure. Is there anything in</p>	<p style="text-align: right;">[148]</p> <p>1 Douglas Berlent</p> <p>2 share that with you.</p> <p>3 Q. There came a time when you received</p> <p>4 some payments from The Orchard for sales of my</p> <p>5 clients' products; isn't that right?</p> <p>6 A. Yes.</p> <p>7 Q. And when was that?</p> <p>8 A. I do not know.</p> <p>9 Q. Do you have a copy of 7, which is your</p> <p>10 document production?</p> <p>11 A. Yes.</p> <p>12 MR. SHELOWITZ: Yes,</p> <p>13 we do.</p> <p>14 Q. Okay. Mr. Maxwell, there are a batch</p> <p>15 of checks, copies of front and backs of checks</p> <p>16 payable to Media Right Productions from The</p> <p>17 Orchard. The first one is August '04. The second</p> <p>18 one is February '05. The third one is August '05.</p> <p>19 The fourth one is May '05. November '05 is the</p> <p>20 next one. February '06, May '06, August '06,</p> <p>21 November '06, August '07, May '07, February '07.</p> <p>22 The checks in the time frame I just described, do</p> <p>23 these checks from The Orchard to Media Right</p> <p>24 Productions, in part or whole, represent the</p> <p>25 payments received by Media Right with respect to my</p>

<p style="text-align: right;">[149]</p> <p>1 Douglas Berlent</p> <p>2 clients' products? In part or in whole?</p> <p>3 A. I do not recall.</p> <p>4 Q. Can you tell us why you gave us these</p> <p>5 checks in the document production?</p> <p>6 A. Because your question said these</p> <p>7 checks, in part or in whole, represent any payments</p> <p>8 to your client and I'm not sure which checks,</p> <p>9 specifically, would contain payments to your</p> <p>10 client.</p> <p>11 MR. SHELOWITZ: For the</p> <p>12 record, these were produced</p> <p>13 by The Orchard, these checks --</p> <p>14 MR. MONAGHAN: Right.</p> <p>15 As a Defendant in this case.</p> <p>16 MR. SHELOWITZ: As Defendant</p> <p>17 in this case.</p> <p>18 Q. Okay. Have you had a chance to look at</p> <p>19 any of these checks, Mr. Maxwell?</p> <p>20 A. No, I have not.</p> <p>21 Q. And, when you got a check from The</p> <p>22 Orchard, it was accompanied by some sort of</p> <p>23 accounting or a statement?</p> <p>24 A. No, it was not.</p> <p>25 Q. How did you know whether you were</p>	<p style="text-align: right;">[151]</p> <p>1 Douglas Berlent</p> <p>2 Productions?</p> <p>3 A. I would have to ask my Counsel if this</p> <p>4 was that document.</p> <p>5 Q. Well, go ahead.</p> <p>6 THE WITNESS: Is this the</p> <p>7 accounting presented to us by</p> <p>8 The Orchard?</p> <p>9 MR. SHELOWITZ: These were</p> <p>10 documents, all the data you see</p> <p>11 showing the royalties and numbers</p> <p>12 of sales. All of that has been</p> <p>13 produced by The Orchard as</p> <p>14 requested, again, by prior Counsel</p> <p>15 and it was turned over, several</p> <p>16 times, I think to your good</p> <p>17 offices.</p> <p>18 MR. MONAGHAN: Right.</p> <p>19 Q. This document - was a document like</p> <p>20 this produced to you in the course of the</p> <p>21 relationship with The Orchard showing sales?</p> <p>22 A. No, it was not.</p> <p>23 Q. Again, you just, simply, trusted The</p> <p>24 Orchard to pay you what you were entitled to?</p> <p>25 A. I did make an attempt, at one point, to</p>
<p style="text-align: right;">[150]</p> <p>1 Douglas Berlent</p> <p>2 getting paid what you were supposed to get paid?</p> <p>3 Just trusted them?</p> <p>4 A. I did.</p> <p>5 Q. Well then, sitting here today, do you</p> <p>6 have any idea of how much money was made on the</p> <p>7 sales of Songs For Dogs or Songs For Cats?</p> <p>8 A. Yes, I do.</p> <p>9 Q. How much?</p> <p>10 A. The amount paid to Media Right</p> <p>11 Productions is, approximately, \$382.00.</p> <p>12 Q. Right now, you're able to say that very</p> <p>13 definitively with certainty, and how did you come</p> <p>14 to that conclusion?</p> <p>15 A. An accounting was provided.</p> <p>16 Q. By?</p> <p>17 A. The Orchard.</p> <p>18 Q. Where is that accounting?</p> <p>19 A. I believe its been presented to you as</p> <p>20 part of the documents.</p> <p>21 Q. Can you look at Bates Page 19 in the</p> <p>22 exhibit?</p> <p>23 A. Okay.</p> <p>24 Q. Is that one of the accountings or an</p> <p>25 accounting from The Orchard to Media Right</p>	<p style="text-align: right;">[152]</p> <p>1 Douglas Berlent</p> <p>2 try to understand how to log onto their system, but</p> <p>3 I couldn't read it and I couldn't navigate through</p> <p>4 it.</p> <p>5 So, in answer to your question, I did</p> <p>6 trust them.</p> <p>7 Q. So, why shouldn't we assume that all</p> <p>8 these checks that you gave us from The Orchard</p> <p>9 pertain to our client?</p> <p>10 A. Because the accounting that they</p> <p>11 provided shows otherwise.</p> <p>12 Q. You just told us they didn't give you</p> <p>13 an accounting.</p> <p>14 A. The accounting that they provided,</p> <p>15 which you asked me to look at.</p> <p>16 Q. This document that was produced in this</p> <p>17 lawsuit is the accounting that you're talking</p> <p>18 about?</p> <p>19 A. Yes.</p> <p>20 Q. And this document didn't even exist</p> <p>21 before this lawsuit was filed; did it?</p> <p>22 MR. SHELOWITZ: Objection.</p> <p>23 MR. MONAGHAN: To your</p> <p>24 knowledge?</p> <p>25 THE WITNESS: I would</p>

<p style="text-align: right;">[153]</p> <p>1 Douglas Berlent</p> <p>2 assume that it did exist, but</p> <p>3 not in printed form. I do not</p> <p>4 have it nor was I given it.</p> <p>5 Q. Okay. So, does this confirm to you</p> <p>6 that these various iTunes and eTailers of music,</p> <p>7 actually, had my clients' music available for sale?</p> <p>8 MR. SHELOWITZ: Objection.</p> <p>9 MR. MONAGHAN: If you</p> <p>10 know?</p> <p>11 THE WITNESS: I did not</p> <p>12 know.</p> <p>13 Q. So, let me understand this. You gave -</p> <p>14 You, Media Right Production, you gave Media Right</p> <p>15 Productions --</p> <p>16 MR. SHELOWITZ: The Orchard.</p> <p>17 MR. MONAGHAN: I'm sorry.</p> <p>18 Yeah.</p> <p>19 Q. You, Media -- You, Media Right</p> <p>20 Productions --</p> <p>21 MR. SHELOWITZ: I didn't</p> <p>22 do anything.</p> <p>23 MR. MONAGHAN: -- gave</p> <p>24 The Orchard these titles to</p> <p>25 sell; is that right? The titles,</p>	<p style="text-align: right;">[155]</p> <p>1 Douglas Berlent</p> <p>2 in 2004.</p> <p>3 Q. But this was an agreement that was</p> <p>4 entered in 2000; correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you gave it to The Orchard in the</p> <p>7 year 2000; correct?</p> <p>8 A. Correct.</p> <p>9 Q. So, it's your understanding there</p> <p>10 wasn't a sale of a single digital download of this</p> <p>11 music before the earliest date of one of these</p> <p>12 checks?</p> <p>13 A. It's my understanding because I didn't</p> <p>14 get paid for any sales on any of the music that</p> <p>15 they had for that period. I did not receive any</p> <p>16 payment from The Orchard.</p> <p>17 Q. So, what accounted for this sudden</p> <p>18 resurgence in interest in our clients' music?</p> <p>19 MR. SHELOWITZ: Objection</p> <p>20 to the form.</p> <p>21 Q. Do you have any idea why, all of a</p> <p>22 sudden, if there are not too many copies as far as</p> <p>23 you folks are concerned, what happened in 2004 or</p> <p>24 2005 that caused this music to be sold when,</p> <p>25 apparently, as far as you know, it wasn't sold at</p>
<p style="text-align: right;">[154]</p> <p>1 Douglas Berlent</p> <p>2 my clients' titles?</p> <p>3 THE WITNESS: Yes, I did.</p> <p>4 Q. You gave them to them, and, sitting</p> <p>5 here today, before this litigation and before we</p> <p>6 got this production, you had no accounting from The</p> <p>7 Orchard as to the sales, no formal written</p> <p>8 accounting as to the sales of my clients' products;</p> <p>9 is that right?</p> <p>10 A. No, I did not.</p> <p>11 Q. How about your own compositions that</p> <p>12 were being sold through The Orchard, did you get an</p> <p>13 accounting on those?</p> <p>14 A. The accounting was made available to</p> <p>15 any Orchard client, but it was made available on an</p> <p>16 on-line format and so I never checked because I</p> <p>17 wasn't able to navigate through the on-line format.</p> <p>18 Q. These checks that The Orchard just</p> <p>19 produced are of relatively recent vintage; aren't</p> <p>20 they? I don't think any one of them is older than</p> <p>21 2005. Did you hear me list the dates?</p> <p>22 A. Yes, I did.</p> <p>23 Q. You didn't hear me say anything before</p> <p>24 2005; did you?</p> <p>25 A. Actually, I did hear you say something</p>	<p style="text-align: right;">[156]</p> <p>1 Douglas Berlent</p> <p>2 all from 2000 to 2004 or 5?</p> <p>3 A. I would not know.</p> <p>4 (Recess taken.)</p> <p>5 Q. Do you know what mechanical license is,</p> <p>6 Mr. Maxwell?</p> <p>7 MR. SHELOWITZ: Asked and</p> <p>8 answered.</p> <p>9 MR. MONAGHAN: It's okay.</p> <p>10 I don't remember.</p> <p>11 I'm going to ask it again.</p> <p>12 THE WITNESS: Yes.</p> <p>13 Q. Okay. What is it?</p> <p>14 A. In my understanding of it, it's a fee</p> <p>15 that you pay to the owner of the song copyright for</p> <p>16 use of their song on a CD.</p> <p>17 Q. Okay. My question and your Counsel</p> <p>18 said I asked you about mechanical royalties before.</p> <p>19 Now, I'm asking about a mechanical license. What</p> <p>20 does a mechanical license entitle the licensee to</p> <p>21 do and what is it the licensor is licensing?</p> <p>22 Isn't it the right to make copies?</p> <p>23 A. From my understanding of how I've</p> <p>24 understood a mechanical license --</p> <p>25 Q. Uh-huh.</p>

<p style="text-align: right;">[157]</p> <p>1 Douglas Berlent</p> <p>2 A. -- I think it's a royalty that you pay</p> <p>3 to the writer/publisher of a song independent of</p> <p>4 the recording.</p> <p>5 Q. But isn't it based on the number of</p> <p>6 copies?</p> <p>7 A. Number of copies sold, I believe.</p> <p>8 Q. Yeah.</p> <p>9 A. I mean each license is different.</p> <p>10 Q. Are you familiar with Section 101 of</p> <p>11 the Copyright Act?</p> <p>12 A. No.</p> <p>13 Q. Are you a member of A.F.T.R.A.?</p> <p>14 S.A.G.? Any of those?</p> <p>15 A. No, I'm not.</p> <p>16 Q. Are you familiar with the musicians'</p> <p>17 union, the American Federation of Musicians?</p> <p>18 A. Vaguely.</p> <p>19 Q. Well, you've had occasion through isn't</p> <p>20 one of the services that you offer is providing</p> <p>21 musicians for studio use by artists?</p> <p>22 A. Yes.</p> <p>23 Q. Don't those musicians belong to unions?</p> <p>24 A. Some may.</p> <p>25 Q. Don't they have to be paid union scale</p>	<p style="text-align: right;">[159]</p> <p>1 Douglas Berlent</p> <p>2 A. Yes, I am.</p> <p>3 Q. And you and Mr. Palladino - did you</p> <p>4 have a garage band or something when you were</p> <p>5 younger?</p> <p>6 A. We did.</p> <p>7 Q. See that. I kind of guessed that.</p> <p>8 And you never became a member of a</p> <p>9 musicians' union?</p> <p>10 A. I believe that we were members of the</p> <p>11 union very early in our career.</p> <p>12 Q. Okay. Did you come to learn, at any</p> <p>13 time, that my clients' music was being sold on</p> <p>14 Amazon?</p> <p>15 A. I did not know that until this</p> <p>16 litigation.</p> <p>17 Q. Did you come to learn how the music</p> <p>18 came to be available on Amazon?</p> <p>19 A. I came to understand that it was</p> <p>20 through the efforts of The Orchard.</p> <p>21 Q. Okay. And how did you come to that</p> <p>22 understanding? Who told you that?</p> <p>23 A. I don't recall, specifically.</p> <p>24 Q. Did you come to learn that the audio CD</p> <p>25 Songs For Dogs by Media Right Productions was being</p>
<p style="text-align: right;">[158]</p> <p>1 Douglas Berlent</p> <p>2 when they participate in making music?</p> <p>3 MR. SHELOWITZ: Objection.</p> <p>4 Irrelevance.</p> <p>5 You can answer.</p> <p>6 THE WITNESS: Oh.</p> <p>7 MR. SHELOWITZ: If you know</p> <p>8 the answer, yeah.</p> <p>9 THE WITNESS: No. As far</p> <p>10 as I know, they do not need to be</p> <p>11 paid union scale if they're not</p> <p>12 part of a musicians' union.</p> <p>13 Q. No. I'm talking about those who are</p> <p>14 union members?</p> <p>15 A. I'm not specific with the terms of the</p> <p>16 union.</p> <p>17 Q. Don't you know that the musicians who</p> <p>18 participate in making the Songs For Dogs and Songs</p> <p>19 For Cats have certain rights?</p> <p>20 A. I would not know that information.</p> <p>21 Q. How long have you been in the music</p> <p>22 business?</p> <p>23 A. About 20, 20 years or so.</p> <p>24 Q. And you're a musician, yourself; aren't</p> <p>25 you?</p>	<p style="text-align: right;">[160]</p> <p>1 Douglas Berlent</p> <p>2 offered on Amazon for \$15.98, new? Did you learn</p> <p>3 that?</p> <p>4 MR. SHELOWITZ: Objection</p> <p>5 to the form.</p> <p>6 MR. MONAGHAN: At any time?</p> <p>7 THE WITNESS: No, I can't</p> <p>8 say that I did learn that.</p> <p>9 Q. Well, when I say "learn that," learn it</p> <p>10 either from papers in the case? From verbal</p> <p>11 sources? From, actually, looking at amazon.com?</p> <p>12 A. I did not look at amazon.com. I did</p> <p>13 not recall hearing it from verbal sources that it</p> <p>14 was sold for \$15.00.</p> <p>15 Q. Don't hold me to the price. Just that</p> <p>16 it was on there?</p> <p>17 A. Yes, I did hear that it was on</p> <p>18 amazon.com.</p> <p>19 Q. Right. And being offered by Media</p> <p>20 Right Productions? Did you learn that, too?</p> <p>21 A. That was brought to my attention, yes.</p> <p>22 MR. SHELOWITZ: Objection</p> <p>23 to the form.</p> <p>24 Q. Okay. And do you have your own</p> <p>25 compositions available for sale on amazon.com?</p>

<p style="text-align: right;">[161]</p> <p>1 Douglas Berlent</p> <p>2 A. I would not know.</p> <p>3 Q. Did you know the full name of my</p> <p>4 clients' composition compilations, these at issue?</p> <p>5 A. I'm not sure I understand the question.</p> <p>6 Q. Well, the CD case that I have here is</p> <p>7 Songs For Dogs and then, parenthetically, "(and the</p> <p>8 people who love them)." Do you remember that being</p> <p>9 part of the name?</p> <p>10 A. I would not have remembered the</p> <p>11 parenthetical. Its been a long time since I've</p> <p>12 seen them.</p> <p>13 Q. And the same with Cats, Songs For Cats</p> <p>14 CD, and jewel case says "Songs For Cats (and the</p> <p>15 people who love them)"; same answer?</p> <p>16 A. Same answer.</p> <p>17 Q. You don't have occasion to go and</p> <p>18 monitor on amazon.com; do you? The Media Right</p> <p>19 Productions products and music that's being offered</p> <p>20 there, you don't do that from time to time?</p> <p>21 A. No.</p> <p>22 Q. Okay. I show you now Exhibit 12,</p> <p>23 Maxwell-12, which is a printout from amazon.com</p> <p>24 and, on the same page, it references Songs For Dogs</p> <p>25 (and the people who love them) by my client and</p>	<p style="text-align: right;">[163]</p> <p>1 Douglas Berlent</p> <p>2 Productions?</p> <p>3 MR. SHELOWITZ: Objection</p> <p>4 to the form.</p> <p>5 Q. You knew that before today; didn't you?</p> <p>6 A. I knew that as part of the proceedings</p> <p>7 in this litigation that was brought to my</p> <p>8 attention.</p> <p>9 Q. Right. Did you go and check out how</p> <p>10 that came to be?</p> <p>11 A. No. I, personally, did not.</p> <p>12 Q. Well, did anyone on your behalf?</p> <p>13 A. I would assume that my Counsel did.</p> <p>14 MR. SHELOWITZ: By the</p> <p>15 way, we haven't seen any claim</p> <p>16 of copyright ownership by Media</p> <p>17 Right Productions anywhere.</p> <p>18 MR. MONAGHAN: You said</p> <p>19 that before, but we showed it</p> <p>20 to you in the Rule 26 production.</p> <p>21 MR. SHELOWITZ: I don't see</p> <p>22 any copyright ownership. Who says</p> <p>23 it's copyright ownership? I don't</p> <p>24 see anything where it says that.</p> <p>25 You're asking questions and assuming</p>
<p style="text-align: right;">[162]</p> <p>1 Douglas Berlent</p> <p>2 then Songs For Dogs, Media Right Productions. You</p> <p>3 see those?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Okay. Did you ever claim a copyright</p> <p>6 ownership of my clients' products?</p> <p>7 A. No, I did not.</p> <p>8 Q. Can you tell us why it is on -- You</p> <p>9 reviewed the papers that were provided by the</p> <p>10 Plaintiffs in this case under their production of</p> <p>11 documents before you came here; didn't you?</p> <p>12 A. No, I cannot say that I did.</p> <p>13 (Plaintiffs' Exhibit</p> <p>14 Maxwell-15, one-page iTunes</p> <p>15 screen shot regarding Songs</p> <p>16 For Cats, marked for</p> <p>17 identification; Plaintiffs'</p> <p>18 Exhibit Maxwell-16, one-page</p> <p>19 iTunes screen shot regarding</p> <p>20 Songs For Dogs, marked for</p> <p>21 identification.)</p> <p>22 Q. Mr. Maxwell, are you saying, until I</p> <p>23 just asked you that question, you didn't know that</p> <p>24 there was a listing on iTunes of my clients' music</p> <p>25 with copyright claim by your company Media Right</p>	<p style="text-align: right;">[164]</p> <p>1 Douglas Berlent</p> <p>2 facts that were not in evidence and</p> <p>3 not demonstrated.</p> <p>4 MR. MONAGHAN: Let me show</p> <p>5 you Maxwell-16. You've seen that</p> <p>6 before. That's in our Rule 26.</p> <p>7 MR. SHELOWITZ: Where does</p> <p>8 it say copyright?</p> <p>9 MR. MONAGHAN: Right where</p> <p>10 it's highlighted.</p> <p>11 MR. SHELOWITZ: Where?</p> <p>12 MR. MONAGHAN: Where</p> <p>13 there's a copyright symbol.</p> <p>14 MR. SHELOWITZ: I don't</p> <p>15 see. Okay. 2006. Okay.</p> <p>16 MR. MONAGHAN: Did I read</p> <p>17 that, correctly?</p> <p>18 MR. SHELOWITZ: It says</p> <p>19 "c 2006 Media Right."</p> <p>20 MR. MONAGHAN: That means</p> <p>21 copyright; doesn't it?</p> <p>22 MR. KORIK: Just to be</p> <p>23 accurate, it's circle p.</p> <p>24 MR. SHELOWITZ: What's</p> <p>25 circle p?</p>

<p style="text-align: right;">[165]</p> <p>1 Douglas Berlent</p> <p>2 MR. KORIK: Photographic</p> <p>3 recording copyright.</p> <p>4 MR. SHELOWITZ: News to us.</p> <p>5 Okay.</p> <p>6 Q. You had no right to claim copyright</p> <p>7 ownership of these compositions; did you?</p> <p>8 A. No, I did not.</p> <p>9 Q. You had no right to give copyright</p> <p>10 rights to anyone else, either; did you?</p> <p>11 A. No, I did not.</p> <p>12 Q. And is it your testimony that you did</p> <p>13 not authorize The Orchard to make copies?</p> <p>14 A. I'm not sure I understand the question.</p> <p>15 Q. Did you authorize The Orchard to make</p> <p>16 copies of my clients' music?</p> <p>17 A. I authorized them to market that music.</p> <p>18 Q. Did you authorize The Orchard to allow</p> <p>19 copyright claims to be made by either you, Media</p> <p>20 Right, or by The Orchard?</p> <p>21 A. No, I did not authorize them to make</p> <p>22 copyright claims.</p> <p>23 Q. And I show you now Exhibit 15 with the</p> <p>24 same copyright claim by The Orchard on iTunes.</p> <p>25 Have you seen that before?</p>	<p style="text-align: right;">[167]</p> <p>1 Douglas Berlent</p> <p>2 Q. Does The Orchard claim copyright, the</p> <p>3 same way it did -- I'm sorry. iTunes, does iTunes</p> <p>4 have a listing on a screen shot for any of your</p> <p>5 compositions that indicates someone other than you,</p> <p>6 as, for example, The Orchard, has rights in your</p> <p>7 music?</p> <p>8 A. I would not know that.</p> <p>9 Q. You were present at the mediation; were</p> <p>10 you not?</p> <p>11 A. Yes, I was.</p> <p>12 Q. Okay. Did you hear Mr. Korik talk</p> <p>13 about this subject matter at the mediation, this</p> <p>14 issue of claiming of copyrights?</p> <p>15 Didn't you talk about that?</p> <p>16 A. I don't recall the specifics of what he</p> <p>17 said.</p> <p>18 Q. Did you have occasion to ever go back</p> <p>19 to The Orchard and say how is it that this is being</p> <p>20 sold on iTunes, indicating a copyright in Songs For</p> <p>21 Cats and I, Media Right Productions, have a</p> <p>22 copyright in Songs For Dogs? Did you ever take</p> <p>23 that up with anybody at The Orchard?</p> <p>24 A. No, I did not.</p> <p>25 Q. Was there a reason you didn't?</p>
<p style="text-align: right;">[166]</p> <p>1 Douglas Berlent</p> <p>2 MR. SHELOWITZ: Again, this</p> <p>3 is --</p> <p>4 MR. MONAGHAN: -- very hard</p> <p>5 to see.</p> <p>6 MR. SHELOWITZ: It's an</p> <p>7 iTunes screen shot. There's a</p> <p>8 "p" with a circle that says</p> <p>9 2000 Orchard. Under there is</p> <p>10 an image Songs For Cats.</p> <p>11 THE WITNESS: I'm not</p> <p>12 seeing it. I have not gone</p> <p>13 to iTunes.</p> <p>14 Q. Did you allow for the possibility, when</p> <p>15 you gave the titles to The Orchard by that</p> <p>16 February 1, 2000 communication with Sam Perlman,</p> <p>17 did you allow for the possibility that you were now</p> <p>18 putting this music out there on the Internet and</p> <p>19 that anyone could make use of this? Did you know</p> <p>20 that was possible?</p> <p>21 A. I don't recall.</p> <p>22 Q. How about your own music, has anyone</p> <p>23 claimed a copyright to your music, other than</p> <p>24 yourself?</p> <p>25 A. Not that I know of.</p>	<p style="text-align: right;">[168]</p> <p>1 Douglas Berlent</p> <p>2 A. I didn't know about it.</p> <p>3 Q. Were you aware that digital copies of</p> <p>4 my clients' music were being sold, on-line?</p> <p>5 A. At what point?</p> <p>6 Q. Any point?</p> <p>7 A. During the process of this litigation,</p> <p>8 yes.</p> <p>9 Q. Well, I think you told us, when I asked</p> <p>10 you about the Product Representation Agreement,</p> <p>11 that the phrase "internet sites" to you meant and</p> <p>12 included The Orchard; right?</p> <p>13 A. Correct.</p> <p>14 Q. And did that, also, include or subsume</p> <p>15 in it places like iTunes?</p> <p>16 A. It evolved to include that.</p> <p>17 Q. So, that's the way iTunes sells the</p> <p>18 tunes? Isn't it through digital downloading?</p> <p>19 A. Yes.</p> <p>20 Q. So then we can assume, correctly, that</p> <p>21 you assumed at the time it did include the right to</p> <p>22 digital download when you gave the tiles to The</p> <p>23 Orchard?</p> <p>24 A. Yes, I did assume that.</p> <p>25 Q. And when did you ever have a</p>

<p style="text-align: right;">[169]</p> <p>1 Douglas Berlent</p> <p>2 conversation with Ellen Bernfeld in which the</p> <p>3 subject of digital downloading through iTunes was</p> <p>4 discussed?</p> <p>5 A. We did not have this discussion through</p> <p>6 iTunes because iTunes did not exist at the time,</p> <p>7 but I do recall that we did discuss Internet and</p> <p>8 digital dissemination.</p> <p>9 Q. What about MSN Music; are you familiar</p> <p>10 with that?</p> <p>11 A. No, I'm not.</p> <p>12 Q. MusicMatch, are you familiar with that?</p> <p>13 A. No, I'm not.</p> <p>14 Q. Any of the following: MusicNet,</p> <p>15 MusicNet Canada, MusicNow and RealNetworks?</p> <p>16 A. No.</p> <p>17 Q. Are you aware, sir, that as recently as</p> <p>18 January of 2007, The Orchard was still showing</p> <p>19 Songs For Cats with your company listed as the</p> <p>20 artist?</p> <p>21 A. No, I was not.</p> <p>22 MR. MONAGHAN: Can we</p> <p>23 mark that.</p> <p>24 (Plaintiffs' Exhibit</p> <p>25 Maxwell-17, one-page screen shot</p>	<p style="text-align: right;">[171]</p> <p>1 Douglas Berlent</p> <p>2 wasn't open to individual one record at a time.</p> <p>3 Q. Did you change the UPC code on Songs</p> <p>4 For Dogs and Songs For Cats?</p> <p>5 A. No, I did not.</p> <p>6 Q. Do you know if there are different UPC</p> <p>7 codes for those, the very same product?</p> <p>8 A. I never looked.</p> <p>9 Q. On the exhibit, the Sam Perlman letter</p> <p>10 which is Exhibit 4, I show you Maxwell Exhibit 4</p> <p>11 right here. I show you --</p> <p>12 MR. SHELOWITZ: This is</p> <p>13 the letter from Media Right</p> <p>14 Productions to The Orchard.</p> <p>15 THE WITNESS: Okay.</p> <p>16 Q. You see the bar code up on the top;</p> <p>17 right?</p> <p>18 A. I see a physical blur.</p> <p>19 Q. Okay. Well, I'll represent to you it's</p> <p>20 a bar code.</p> <p>21 A. Okay.</p> <p>22 Q. Who put that there?</p> <p>23 A. I do not know.</p> <p>24 Q. And, beneath that bar code, it says,</p> <p>25 "Media Right Productions, Songs For Dogs." Doesn't</p>
<p style="text-align: right;">[170]</p> <p>1 Douglas Berlent</p> <p>2 regarding "The Orchard, Release</p> <p>3 Info.," marked for identification.)</p> <p>4 Q. Did you tell The Orchard that you were</p> <p>5 the record label for Songs For Cats and Songs For</p> <p>6 Dogs?</p> <p>7 A. I don't recall using the specific term</p> <p>8 "record label."</p> <p>9 Q. Well, can you explain how it is, if you</p> <p>10 can mark those, that The Orchard is showing your</p> <p>11 company as the record label?</p> <p>12 A. From what I recall, and I believe it's</p> <p>13 still to be the case, the only way to get onto The</p> <p>14 Orchard, even back in its earliest days, was to be</p> <p>15 a record label. In other words, not an artist with</p> <p>16 one record but to have more than one record, and</p> <p>17 that was, specifically, what Russ was referring</p> <p>18 Ellen to me about because we did have those titles</p> <p>19 under the Media Right, quote, "label." That was</p> <p>20 all my music and all me and Songs For Cats and</p> <p>21 Songs For Dogs was included in that batch of music</p> <p>22 that was sent to The Orchard.</p> <p>23 So, that is, most likely, why it was</p> <p>24 put under the Media Right label because you'd have</p> <p>25 to double-check me on it, but I believe that it</p>	<p style="text-align: right;">[172]</p> <p>1 Douglas Berlent</p> <p>2 that mean that that's your bar code with your UPC</p> <p>3 on this letter that you sent to Sam Perlman?</p> <p>4 A. That was not on the letter that I sent</p> <p>5 to Sam Perlman.</p> <p>6 Q. You produced this. How did it get to</p> <p>7 us?</p> <p>8 A. That was provided, as far as I know, by</p> <p>9 The Orchard because I did not have a copy of that</p> <p>10 letter. So, that could have been attached by them,</p> <p>11 but I have no knowledge of how it was put there.</p> <p>12 Q. Well, since we didn't get it until you</p> <p>13 produced it in this case, would you agree the only</p> <p>14 possibilities are (a) you put it there or The</p> <p>15 Orchard put it there?</p> <p>16 A. I would not agree to that because I do</p> <p>17 not know how it got there.</p> <p>18 Q. Well, do you have a bar code that you</p> <p>19 use on your properties?</p> <p>20 A. I used to. I don't think it's,</p> <p>21 currently, functioning nor have I renewed it,</p> <p>22 probably, for many years.</p> <p>23 Q. What would the function of this bar</p> <p>24 code that says "Media Right Productions," beneath</p> <p>25 it, Songs For Dogs, be?</p>

<p style="text-align: right;">[173]</p> <p>1 Douglas Berlent</p> <p>2 MR. SHELOWITZ: Objection</p> <p>3 to the form. He testified he</p> <p>4 doesn't know how it got there.</p> <p>5 MR. MONAGHAN: That's not</p> <p>6 the same question as what would</p> <p>7 it be used for.</p> <p>8 MR. SHELOWITZ: If you know?</p> <p>9 THE WITNESS: What would a</p> <p>10 bar code, in general, be used</p> <p>11 for?</p> <p>12 MR. MONAGHAN: No. This</p> <p>13 bar code?</p> <p>14 THE WITNESS: I don't know</p> <p>15 because I didn't put it there.</p> <p>16 Q. Isn't it a fact that's your bar code?</p> <p>17 A. I don't know. I don't know what my bar</p> <p>18 code is.</p> <p>19 Q. How would you be able to find out?</p> <p>20 A. You could take a physical copy of one</p> <p>21 of my albums and look at my bar code.</p> <p>22 Q. Okay. Is the bar code on anything we</p> <p>23 have?</p> <p>24 MR. KORIK: Sometimes, it's</p> <p>25 on the Amazon listings.</p>	<p style="text-align: right;">[175]</p> <p>1 Douglas Berlent</p> <p>2 clients' music Songs For Dogs is available now for</p> <p>3 listening at no cost at a site known as "Rhapsody"?</p> <p>4 A. I'm not aware of that.</p> <p>5 Q. Well, do you know of any way it would</p> <p>6 have gotten on the site to be available to be</p> <p>7 listened to other than through The Orchard?</p> <p>8 A. Do I know of any other way that it</p> <p>9 could have gotten on the site?</p> <p>10 Q. That's right.</p> <p>11 A. I'm sure there are other ways to do it,</p> <p>12 yes.</p> <p>13 Q. Okay.</p> <p>14 A. Do I know how to? No.</p> <p>15 MR. MONAGHAN: I don't</p> <p>16 have any more questions at</p> <p>17 this time. There may be</p> <p>18 further occasion, depending</p> <p>19 on other discovery in the</p> <p>20 case of documents that are</p> <p>21 forthcoming from you or some</p> <p>22 other party or deposition</p> <p>23 testimony that may require</p> <p>24 you to come back and be</p> <p>25 questioned further.</p>
<p style="text-align: right;">[174]</p> <p>1 Douglas Berlent</p> <p>2 MR. MONAGHAN: Yeah. Let's</p> <p>3 see.</p> <p>4 THE WITNESS: Music For</p> <p>5 Lovemaking, for example.</p> <p>6 MR. KORIK: No. Amazon</p> <p>7 assigns its own bar code.</p> <p>8 Q. Would you agree with me, Mr. Maxwell,</p> <p>9 that in any instance where these products were</p> <p>10 listed and a copyright notice was indicated either</p> <p>11 with a c or with a p, it should have shown my</p> <p>12 clients as the copyright owners?</p> <p>13 A. Yes, it should have.</p> <p>14 Q. Are you familiar with an Internet site</p> <p>15 known as "Rhapsody"?</p> <p>16 A. No, I'm not.</p> <p>17 Q. Are you aware of any instance where</p> <p>18 music is available free of charge on the Internet?</p> <p>19 A. Yes.</p> <p>20 Q. And how is that? How would one go</p> <p>21 about getting that free music? Where do they go?</p> <p>22 What sites?</p> <p>23 A. I've never done it, but I, certainly,</p> <p>24 am aware of the case of Napster.</p> <p>25 Q. Okay. Now, are you aware of that my</p>	<p style="text-align: right;">[176]</p> <p>1 Douglas Berlent</p> <p>2 MR. SHELOWITZ: I have a</p> <p>3 few questions, if I may?</p> <p>4 MR. MONAGHAN: Sure.</p> <p>5 EXAMINATION BY</p> <p>6 MR. SHELOWITZ:</p> <p>7 Q. I'm just going to ask a few questions,</p> <p>8 Mr. Maxwell. The same instruction, answer to the</p> <p>9 best of your knowledge.</p> <p>10 Did you ever sell any music of the</p> <p>11 Plaintiffs that you've been shown today on</p> <p>12 amazon.com?</p> <p>13 MR. MONAGHAN: Objection</p> <p>14 as a leading question from his</p> <p>15 own lawyer.</p> <p>16 Q. Did you, personally or through Media</p> <p>17 Right Productions, ever sell any Dogs and Cats CDs</p> <p>18 on amazon.com?</p> <p>19 A. No, I did not.</p> <p>20 Q. Did you ever sell any of the Dogs and</p> <p>21 Cats CDs on any other on-line marketplace?</p> <p>22 A. No, I did not.</p> <p>23 Q. Earlier, in the questions, Mr. Monaghan</p> <p>24 showed you some exhibits that showed what looked</p> <p>25 like a p and a circle around it and the word</p>

<p style="text-align: right;">[177]</p> <p>1 Douglas Berlent</p> <p>2 "Mediaright" on web pages showing the Plaintiffs'</p> <p>3 music or CDs; do you recall that?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Do you know how those, if it is a p</p> <p>6 with a circle and how it got there?</p> <p>7 A. I have no idea.</p> <p>8 Q. Did you ever authorize anyone to show</p> <p>9 copyright ownership whether a c with a circle or a</p> <p>10 P with a circle related to any of the music that</p> <p>11 was produced, composed and contained in any of</p> <p>12 those?</p> <p>13 A. No, I did not.</p> <p>14 Q. Did you ever represent that you were</p> <p>15 the copyright owner regarding any of the music of</p> <p>16 Plaintiffs?</p> <p>17 A. No, I did not.</p> <p>18 Q. Did you ever copy in any form</p> <p>19 whatsoever, either you or Media Right Productions,</p> <p>20 any of the CDs or tapes that the Plaintiffs had</p> <p>21 shown us today as Exhibits 8, 9, 10, 9A or 8A?</p> <p>22 A. No, I did not.</p> <p>23 Q. Did you ever --</p> <p>24 MR. MONAGHAN: This is</p> <p>25 improper. Objection. Excuse me.</p>	<p style="text-align: right;">[179]</p> <p>1 Douglas Berlent</p> <p>2 Productions were the artist that created, composed</p> <p>3 or recorded any of the music that Plaintiffs claim</p> <p>4 are set forth in those exhibits today?</p> <p>5 A. No, I did not.</p> <p>6 MR. SHELOWITZ: Thank you.</p> <p>7 We have no questions.</p> <p>8</p> <p>9</p> <p>10 Douglas Berlent</p> <p>11 Sworn to before me this</p> <p>12 day of</p> <p>13 2008.</p> <p>14</p> <p>15</p> <p>16 Notary Public</p> <p>17 * * *</p> <p>18 E X H I B I T S</p> <table border="0"> <tr> <td>19 Plaintiffs' Description</td> <td>Page</td> </tr> <tr> <td>20 Maxwell-1 One-page document entitled</td> <td>40</td> </tr> <tr> <td>21 "Recording a 'demo' CD"</td> <td></td> </tr> <tr> <td>22 Maxwell-2 Two-page document entitled</td> <td>45</td> </tr> <tr> <td>23 "Media Right Productions"</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </table>	19 Plaintiffs' Description	Page	20 Maxwell-1 One-page document entitled	40	21 "Recording a 'demo' CD"		22 Maxwell-2 Two-page document entitled	45	23 "Media Right Productions"		24		25																															
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<p style="text-align: right;">[178]</p> <p>1 Douglas Berlent</p> <p>2 MR. SHELOWITZ: I'm entitled</p> <p>3 to cross-examine, ask the questions.</p> <p>4 MR. MONAGHAN: Let me get my</p> <p>5 objection on the record.</p> <p>6 MR. SHELOWITZ: Please.</p> <p>7 MR. MONAGHAN: Cross-examination</p> <p>8 of your own client is limited to</p> <p>9 correction of some answer that was</p> <p>10 given, amplification of an answer.</p> <p>11 It's not to make a case.</p> <p>12 If you want to make a case,</p> <p>13 you call him as a witness in the</p> <p>14 trial in the case. It's not let's</p> <p>15 go through the whole thing.</p> <p>16 MR. SHELOWITZ: I have one</p> <p>17 more question.</p> <p>18 MR. MONAGHAN: Good.</p> <p>19 MR. SHELOWITZ: I'm asking</p> <p>20 questions you omitted in your</p> <p>21 questioning. I think they're</p> <p>22 relevant and important so that</p> <p>23 the record is, absolutely, clear.</p> <p>24 Q. Did you ever represent to anyone,</p> <p>25 Mr. Maxwell, that either you or Media Right</p>	<p style="text-align: right;">[180]</p> <p>1 Douglas Berlent</p> <p>2 E X H I B I T S</p> <p>3 (Continued)</p> <table border="0"> <tr> <td>4 Plaintiffs' Description</td> <td>Page</td> </tr> <tr> <td>5 Maxwell-3 Two-page document entitled</td> <td>52</td> </tr> <tr> <td>6 "Product Representation</td> <td></td> </tr> <tr> <td>7 Agreement"</td> <td></td> </tr> <tr> <td>8 Maxwell-4 One-page letter dated</td> <td>52</td> </tr> <tr> <td>9 February 1, 2000</td> <td></td> </tr> <tr> <td>10 Maxwell-5 Two-page document which</td> <td>53</td> </tr> <tr> <td>11 states at the top</td> <td></td> </tr> <tr> <td>12 "From: The Orchard"</td> <td></td> </tr> <tr> <td>13 Maxwell-6 Excel spreadsheet</td> <td>53</td> </tr> <tr> <td>14 Maxwell-7 A document entitled "Songs</td> <td>68</td> </tr> <tr> <td>15 For Cats/Songs For Dogs"</td> <td></td> </tr> <tr> <td>16 and Bates-stamped 1 through</td> <td></td> </tr> <tr> <td>17 32</td> <td></td> </tr> <tr> <td>18 Maxwell-8 A CD entitled "Songs For</td> <td>68</td> </tr> <tr> <td>19 Dogs (and the people who</td> <td></td> </tr> <tr> <td>20 love them)"</td> <td></td> </tr> <tr> <td>21 Maxwell-9 A CD entitled "Songs For</td> <td>68</td> </tr> <tr> <td>22 Cats (and the people who</td> <td></td> </tr> <tr> <td>23 love them)"</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </table>	4 Plaintiffs' Description	Page	5 Maxwell-3 Two-page document entitled	52	6 "Product Representation		7 Agreement"		8 Maxwell-4 One-page letter dated	52	9 February 1, 2000		10 Maxwell-5 Two-page document which	53	11 states at the top		12 "From: The Orchard"		13 Maxwell-6 Excel spreadsheet	53	14 Maxwell-7 A document entitled "Songs	68	15 For Cats/Songs For Dogs"		16 and Bates-stamped 1 through		17 32		18 Maxwell-8 A CD entitled "Songs For	68	19 Dogs (and the people who		20 love them)"		21 Maxwell-9 A CD entitled "Songs For	68	22 Cats (and the people who		23 love them)"		24		25	
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<p style="text-align: right;">[182]</p> <p>1 Douglas Berlent</p> <p>2 E X H I B I T S</p> <p>3 (Continued)</p> <p>4 Plaintiffs' Description Page</p> <p>5 Maxwell-15 One-page iTunes screen shot 162</p> <p>6 regarding Songs For Cats</p> <p>7 Maxwell-16 One-page iTunes screen shot 162</p> <p>8 regarding Songs For Dogs</p> <p>9 Maxwell-17 One-page screen shot 169</p> <p>10 regarding "The Orchard,</p> <p>11 Release Info."</p> <p>12 * * *</p> <p>13 INFORMATION TO BE SUPPLIED</p> <p>14 Page Line Description</p> <p>15 52 7 Whether the witness has a copy of the</p> <p>16 Product Representation Agreement with</p> <p>17 regard to Smokin' Sounds, and, if so,</p> <p>18 the production of it</p> <p>19 * * *</p> <p>20 REQUEST FOR PRODUCTION</p> <p>21 Page Line Description</p> <p>22 27 25 Mr. Maxwell's statements that would</p> <p>23 reflect payments he's received</p> <p>24 through The Orchard for digital</p> <p>25 downloading for the last year</p>	<p style="text-align: center;">C E R T I F I C A T I O N</p> <p>I, Kathryn Lebeau, a Stenotype Reporter and Notary Public within and for the State of New York, hereby certify:</p> <p>That the witness whose examination is hereinbefore set forth was duly sworn by a Notary Public and that the transcript of examination is a true record of the testimony given by the said witness; and</p> <p>That I am not related to any of the parties to this action by blood or marriage and I am in no way interested in the outcome of this matter.</p> <p style="text-align: right;">Kathryn Lebeau</p>

A				
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